

*Direct*

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**TO:** Donald Fried, Esq.

**DATE:** October 2, 1991

**FROM:** David Rees Davies *DRD*

**SUBJECT: Proposal of Yale University's Advisory  
Committee on Investor Responsibility**

Yale University's Advisory Committee on Investor Responsibility (the "Committee") promulgated written recommendations concerning the University's investment in securities issued by tobacco manufacturers. I reviewed the recommendations and assessed the extent to which the present practices of Philip Morris Incorporated ("PM USA") satisfy the objectives set by the Committee.

I also reviewed the factual findings upon which the Committee premised its recommendations. The findings of fact fail to recognize the continuing efforts of tobacco manufacturers to accomplish objectives identical to those articulated by the Committee.<sup>1</sup> For example, the sixth finding of fact states:

Yale's voice strategy should focus on two extremely harmful marketing practices - sales to minors and overseas without adequate warnings - which the companies could control more effectively were they to apply their enormous resources in a committed pursuit of this goal. The companies have manifestly failed to do this, and there is little reason to expect that their recently-announced steps will be much more effective.

The Committee's ultimate recommendation ignores the existence and actions of state and federal regulatory bodies with extensive experience and undeniable

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<sup>1</sup>I do not address foreign sales. I have assumed that Philip Morris International will articulate a response to this issue.

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expertise. The action recommended is establishment of a "committee of experts" to design controls on "(a) the marketing of tobacco products to minors, and (b) the marketing of tobacco products overseas without health warnings, advertising limitations, and other health-related restrictions that are at least as stringent as those used in the United States." An audit team of "public health and advertising experts, funded by the tobacco companies but operating independently of them" would be charged with monitoring compliance and imposing sanctions.

The activities of PM USA are subject to legislative, regulatory and self imposed restrictions which satisfy the Committee's objectives. There is a myriad of state laws prohibiting sales to minors. The Federal Trade Commission and state regulatory authorities police unfair or deceptive tobacco advertising. The Committee's suggestion that tobacco manufacturers impose "sanctions through contractual arrangements with wholesale and retail sellers of their products" is unrealistic and unenforceable. Lack of privity and potential encroachment upon federal, state and local authority to enforce existing regulations are not addressed in the recommendation. *expaul*

In addition to compliance with federal, state and local regulations of tobacco marketing and advertising, tobacco manufacturers' marketing and advertising efforts are constrained by the Cigarette Advertising Code and the Code of Cigarette Sampling Practices. Both are long standing voluntary agreements to which all tobacco manufacturers are parties.

The Cigarette Advertising Code, adopted in 1964, and revised in December 1990 is attached. The constraints imposed by the code are scrupulously

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observed by Philip Morris in the design and execution of all of its marketing and promotional activity.

PM USA recently created an "It's the Law" program for the National Association of Convenience Stores and a variety of retail and grocery associations to prevent the sale of cigarettes to minors. As part of the program, PM USA distributed lists of state laws and penalties, tips on verifying the age of customers and point-of-sale materials stating "It's the Law. You must be 18 to Buy Tobacco Products" to tobacco retailers. A brochure describing the program is attached. A pamphlet summarizing actions and initiatives by Philip Morris USA to prevent minors from smoking is also attached.

PM USA and other tobacco manufacturers also produced and distributed nationally, without charge, a booklet entitled "Tobacco: Helping Youth Say No." The booklet contains guidelines for educators and parents to help minors recognize and resist peer pressure to smoke. A copy is attached. Also attached is a pamphlet distributed by the Tobacco Institute entitled "Smoking and Young People - Where the Tobacco Industry Stands."

In all of its activities, PM USA is constrained by laws enacted to regulate cigarette sales and advertising, as well as by internal policies designed to effectuate the objectives established by the Committee. The cigarette industry is highly regulated to ensure that the objections espoused by the Committee are met. I have attached a summary of significant federal regulatory efforts over the past three decades. There are, in addition, laws enacted in every state which impose constraints upon the activities of tobacco manufacturers.

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If the reaction of Philip Morris' executives to the Yale proposal can be summarized it would be as follows:



# ***SMOKERS HAVE RIGHTS TOO***



cc: D.E.R. Dangoor  
E. Merlo  
J.R. Nelson, Jr.  
(Without Attachments)

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